

Legal Notes: October 2013

The most underreported story of the year has to be the radical changes in how the State recovers money from citizens who need Medicaid (BadgerCare). Assemblyman Steve Doyle wrote an excellent guest column in the La Crosse Tribune on August 18 (online) on the detrimental effect on farms and small businesses but there has been little discussion otherwise.

First, some background. One spouse goes into a nursing home and the other remains in the home ("community spouse"). The couple doesn't have funds to pay for the nursing home care so applies for Medicaid (BadgerCare). Under the old law, the community spouse was able to keep and use a certain amount of money, as well as the family home, without endangering the other spouse's eligibility for Medicaid. The community spouse could choose to spend or not spend that money, or even leave it the couple's children.

Under the new rules, there is no allocation to the community spouse. In other words, the State can now come after the community spouse's assets. The State can place a lien against all of the couple's assets to try and get reimbursed for the Medicaid costs. The community spouse no longer has the right to use, or transfer, the property as he or she wishes.

The State will not go after the couple's property while the one spouse is still in the nursing home. However, after that spouse in the nursing home dies, the State can go after the community spouse's assets. Not only can the State go after those assets, the State can look back to five years prior to the application for Medicaid and recover against those assets as well (as opposed to just those assets held at the time of death, as the federal law currently provides for).

Confused yet?

These recovery laws are unprecedented and may be in contradiction to current federal law. They could result in uncertainties over real estate titles, increased need for probate proceedings and even more divorces among the elderly.

The implementation of these new rules is also uncertain. At the last minute, the legislature inserted an unusual provision requiring the Dept. of Health Services to go back to the legislature before implementation, and the DHS has until June 2015 to do so.

Stay tuned!